The US Army War College Quarterly: Parameters

Volume 31
Number 2 *Parameters Summer 2001*

Article 3

5-7-2001

The Military Obligation of Citizens Since Vietnam

James Burk

The Military Obligation of Citizens Since Vietnam

JAMES BURK

From *Parameters*, Summer 2001, pp. 48-60.

On the eve of the Persian Gulf War, as President George Bush worked to win public support for his policy to liberate Kuwait, he made it plain that his war plans included no plan to restore the military draft. He would call up the National Guard and Army Reserve. By taking these steps, Bush distanced himself as far as possible from the manpower policies pursued in 1965 by President Lyndon Johnson. After deciding to escalate the war in Vietnam, Johnson refused to call up the National Guard or Army Reserve and chose instead to rely solely on the draft. These different approaches to raising an army for war did not simply reflect different policy preferences of the two administrations. While it was politically possible for Johnson to rely on the draft alone, President Bush knew that he could not restore the draft even if he wanted to. The Vietnam War and the rise of the all-volunteer force had moved the country away from an "unlimited" toward a "limited" conception of the citizen's obligation to perform military service. That movement in political culture, which this article explores, can be traced through three related trends.

First, widespread doubt about the legitimacy of the Vietnam War increased public tolerance of opposition to the draft and refusal to perform military service by conscientious objectors. It also intensified citizen distrust of strong central government, making it possible to argue that citizens should not be coerced by the state to assume the burdens of military service, that they are better off when they are voluntarily attracted to the task by the rewards of the marketplace.

Second, reconfiguring the armed forces in the wake of the Vietnam War to create a "total force" carried on the citizen-soldier tradition in a way that the draft never could. The total force integrated reserve units more closely into the warfighting capacities of the active-duty force and made any deployment as large as Vietnam impossible unless the President took the political risk to call up the reserves. Such a step requires substantial justification accepted by the public whose lives would be disrupted by the call to arms.

Third, government attempts to define and impose the scope and content of the military obligation of citizens have been sharply contested during the all-volunteer force era, especially when the use of compulsion is involved. One result of these contests was to make the military more accepting of the diversity in the population of citizens willing to serve. This, in turn, redefined the character of military service in ways that are controversial in part because they mark a sharp break with traditional military culture. Another result was to extend the application of citizen rights within the military. Put generally, citizens have played a more active role than previously in determining what the citizen's military obligation should be.

To examine these trends more closely, I rely for evidence on critical cases decided by the Supreme Court that bear on the citizen's military obligation and on more traditional sources common to institutional studies of change in the military. My aim, however, is not fixed on a study of the military in American society. It is fixed rather on explaining how the military obligation has changed since Vietnam. To begin, let us consider some background about the military obligation of citizens before Vietnam.

Historical Background

During the world war era, the legitimacy of the draft was based on a belief, widely accepted, that citizens had an unlimited liability to perform military service when required by the state. The end of the draft after Vietnam suggests there was weakening of this belief; doubts grew about the compulsory character of the duty to serve.

Even before the war in Vietnam, there had been discussions among leaders of both parties about the feasibility of ending the draft. Following the Korean War, the proportion of draft-eligible men actually drafted shrunk dramatically, with draftees declining from roughly 58 percent of all men entering the military in 1954 to just 22 percent in 1961. From 1955 to 1964, the number drafted averaged only about 100,000 per year. Meanwhile, the draft-age population increased, from 8 million in 1958 to 12 million in 1964.[1] So it was reasonable to ask whether a draft was required. Nor was it just a matter of numbers. There was also a question about the functional need for a draft. Conscription was an appropriate and efficient means to raise a mass army like the ones required to fight the world wars. But what use would mass armies be if the next general war were a nuclear war? Some thought there was none, but the question was vexing because there was no simple answer.

Nevertheless, public support for the draft remained high, so political leaders risked attack if they publicly suggested doing away with it, as Adlai Stevenson did in his 1956 presidential campaign. Strong public support for the draft in this period was owed perhaps to the light burden the draft imposed. We might say that it was easy to support the military obligation of male citizens as an abstract ideal when few in fact were called to serve. But that would be too cynical. It ignores the deep feelings of a generation that was drafted to fight World War II and whose fathers had been drafted in World War I. To them, it seemed both natural and worthwhile that their sons should also be drafted to defend the country; they believed that young men ought to perform military service for the country and were better off for doing so. Paul Tibbets, who piloted the *Enola Gay* on its mission to bomb Hiroshima, stated a view commonly held by members of his generation when he said, "Every man ought to pay the price to live in this country. And that means helping to defend it."[2] It was in this context that Lyndon Johnson decided in 1965 to use the draft to raise forces needed for the Vietnam War. He did not anticipate--nor, to be fair, did many others--how quickly his policies would generate strong protests against both the war and the draft.

Ironically, the protesters were drawn primarily from the ranks of the politically liberal, Johnson's natural constituency. They offered various reasons why the draft should be opposed. Of all these reasons, the charge that the draft was inequitable had the greatest currency in the market of public opinion, and its circulation got the attention of public officials. The draft's central problem was that it unfairly distributed the burdens of military service and could not do otherwise, since there were more young men eligible for the draft than were needed to perform military service. This irresolvable dilemma was conjured nicely by the question: Who serves when not all serve? Still, there was no answer to it, and the perception of inequities eroded public confidence in the draft. In 1966, for the first time since the question was asked, less than a majority (only 43 percent) believed that the draft was handled fairly in their community.[3] Although the public still supported the draft, the problems protesters exposed raised serious questions about its operation during the Vietnam War and encouraged many lawsuits that challenged the constitutionality of the war and the administration of the draft.[4]

Legal challenges to enforcement of the military obligation were no new thing. When conscription was first relied on in World War I, many cases were brought that questioned the use of compulsion to raise an army for a war fought far away from the country's homeland. But at that time, while some objected, most people took it for granted that citizens were obligated to perform military service when called on by the state. They were not simply resigned to it, but believed it was an important obligation to fulfill. They questioned the loyalty and commitment of those who were unwilling to serve. They thought unwillingness to serve displayed a blatant lack of attachment to the principles of the Constitution, an attachment that lay at the core of good citizenship.

The Supreme Court upheld this popular view when it decided that Congress had the constitutional right to raise an army by this means.[5] But it was not just a matter of supporting conscription. At stake was the principle that citizens should bear arms to defend the country. During the interwar years, the Supreme Court three times denied citizenship to applicants who were otherwise well qualified, because they refused as a matter of conscience to promise to fulfill their military obligation.[6] In a fourth case, Justice Benjamin Cardozo noted that the exemption of conscientious objectors from military service was always an "act of grace" by the state and was never meant to establish "a right of private judgment . . . above the powers and compulsion of the agencies of government."[7]

These rulings accurately reflected the prevailing opinion at the time, although they were sometimes controversial and subject to change. Indeed, experience with noncombatant conscientious objectors during World War II altered the views of many in Congress, leading Congress to pass a law in 1943 that enabled them to become citizens despite their

refusal to bear arms. Immediately after the war, on the strength of this new law, the court reversed its earlier opinions denying citizenship to applicants unwilling to bear arms. The war had shown, the court ruled, that "one may serve his country faithfully and devotedly, though his religious scruples make it impossible for him to shoulder a rifle."[8] This decision is important because it walked away from the idea that citizens were absolutely obligated and could be compelled to perform military service. It implied that readiness to perform military service was *not* an essential defining characteristic of citizenship.

Expanding the Right of Private Judgment

During the Vietnam War, the court traveled farther down this path. It vastly expanded the sphere of "private judgment" when determining who qualified for classification as a conscientious objector under current draft law.

The Supreme Court took the first step in this direction in 1965 when it decided *US* v. *Seeger*.[9] The arguments in this case were heard in October 1964 and the decision came down in March, before the Vietnam War was expanded and the draft became a source of strain and division. In this case, the central question was whether the claims of conscientious objectors could be recognized if the objectors failed to believe in a Supreme Being as the law required. The government thought they could not be recognized. But Seeger argued that his claim for objector status should not be denied so long as his religious beliefs led him sincerely to object to participation in all wars. The Supreme Court agreed with Seeger. It noted that eminent theologians of the day were unsure what role a Supreme Being played in religious belief and doctrine. The justices were reluctant to allow the government to impose its own views in this realm. It is enough, they held, "that the beliefs which prompted his [Seeger's] objection occupy the same place in his life as the belief in a traditional deity holds in the lives of his friends, the Quakers."[10]

Writing five years later, long after the Vietnam War had divided the country, the court widened this ruling in *Welsh* v. *US*.[11] In this case, the question was whether Congress could defer to an individual's conscience only when the individual's views stemmed from adherence to religious beliefs. The court believed that Congress could not. "If the exemption [from military service] is to be given application," wrote Justice John Marshall Harlan in his concurring opinion, "it must encompass . . . those whose beliefs emanate from a purely moral, ethical, or philosophical source."[12] Congress could draw no line between religious beliefs and secular beliefs when determining who might be recognized as a conscientious objector. As a result of this decision, the authority of individual conscience, however formed, was elevated in its capacity to refuse the obligation of military service. In theory, Congress might have rewritten the draft law to eliminate any provision for conscientious objectors. It was still the law that "government has the right to the military service of all its able-bodied citizens, and may, when an emergency arises, justly exact that service from all."[13] But in practice, with continuing protests about the justness of the war and the equity of the draft, such an act was politically impossible.

It would be wrong to conclude that the court in this period had taken sides with the protesters or was bent on thwarting the government's ability to use the draft to wage war in Vietnam. In fact, it refused to hear challenges to the constitutionality of a draft to fight an undeclared war, and it upheld the law penalizing those who burned their draft cards. It also refused to recognize the claims of those whose conscientious objection was selective, applying only to wars the objector thought unjust. In light of these decisions, a fairer conclusion would be that the court's actions reflected a concern found in the larger political culture about the fairness of the draft. The *Seeger* and *Welsh* decisions attempted to rectify certain inequities in the draft, the costs of which were exacerbated by the Vietnam War, and they did so by shifting the balance of power in the social contract between citizen and state, in favor of the citizen.

Arguably, the movement to establish an all-volunteer force worked in the same direction. "Young Turk" Republicans in Congress embraced the idea in the mid-1960s. They thought the government could not administer a fair system of conscription so long as no mass mobilization was required. As it was, the draft was like a tax unfairly levied. It fell heaviest on those forced to serve, who were then paid poorly for their service. The rest, meanwhile, got national security at cut rates. This inequity could be removed only if the people paid the going rate for their military personnel, and that rate could be determined only if soldiers were recruited in the open market. An all-volunteer force was the only way out of this dilemma. With an all-volunteer force it was still true that only some would serve, but they would be paid at market rates and Congress would levy taxes on everyone to pay for a force of the size and quality it wanted. Richard Nixon made this argument his own when he successfully ran for President in 1968 and pledged to end the

draft. His pledge was ultimately redeemed early in his second term, coincident with the winding down of American participation in the Vietnam War.

Some worried that the new all-volunteer force, by reducing enlistment to a free-market transaction, signaled a corruption of the citizen's military obligation. This was too strong a claim. By establishing the all-volunteer force, the Nixon Administration altered the balance of power between citizens and the government as had the Supreme Court, to favor the individual, limiting--not ending--the liability of citizens to perform military service. The unexpected result was to revive the citizen-soldier tradition.

Reviving the Citizen-Soldier Tradition

What many early critics of the all-volunteer force feared was that without the draft, the military would become less representative of the society it was supposed to defend. Given the forces of self-selection, they worried that those who were relatively disadvantaged members of society and driven by economic necessity would fill the lower ranks of the all-volunteer force. As a matter of principle, they thought social representativeness was necessary to meet the egalitarian ideals of democratic society and to help maintain civilian control over the military.

Their worries were not groundless, especially in the early years of the all-volunteer force, but they were perhaps too crudely stated. There is no question that the all-volunteer force was differently composed than the conscripted force it replaced, with many more minorities and many more women. But that did not mean the military was less well connected to society than it had been. The continuing need to recruit large numbers of youths into the service meant the all-volunteer force had to compete effectively in an open labor market. That made the military (sometimes reluctantly) more sensitive to new social trends, especially with respect to race and gender issues. Initial steps in this direction--during the "We-want-to-join-you" days of the volunteer army--were sometimes missteps, misunderstood both within the service and without.[14] But over the long run, competing for youth labor requires the military to remain close to the life of civilian society.

Nor should we exaggerate the extent to which military recruiting depends on market forces. Traditionally, those who enlisted for military service believed that they were fulfilling an obligation of citizenship. There is evidence that this belief was relatively more important than economic factors for explaining the decisions of youths to enlist in the all-volunteer force.[15] Acting from a sense of duty did not mean they received no benefits from their service; it was not a case of pure altruism. As David R. Segal pointed out, citizens historically received welfare benefits (housing, medical care, the G.I. bill, pensions, preferential hiring, etc.) in return for serving in the military, benefits that were unavailable to those who did not serve.[16] This tradition has been maintained for the all-volunteer force, in the form of job training, financial aid for higher education, and other social goods. But this cannot be reduced to a simple economic exchange. Provision of welfare benefits is one means by which society recognizes and honors those who fulfill their military obligation. Continuing these provisions for members of the all-volunteer force underscores the importance of that obligation.

Crucial to the idea that citizens should be soldiers was the military's reorganization in the 1970s to integrate reserve forces more closely with the active-duty force and create what was called the "total force." The decision to rely more heavily on reserve forces, especially for combat service support, was in part based on expediency. After the Vietnam War, Congress cut deeply into the manpower and material resources available for defense. By transferring key tasks from the active-duty force to the reserves, it was possible to retain--even to expand somewhat--the overall capacities of the military establishment. But there was also a political purpose to the integration that cannot be overlooked. That was to limit the ability of the government to commit the country to war or any large-scale deployment without calling up reserve forces. The value of calling up reserves was not based on a high evaluation of their military effectiveness. The readiness of the reserves has always been a matter of bitter controversy. The value rather was that such a step requires substantial justification, accepted by the public whose lives would be disrupted by the call to arms. No large-scale deployment could occur without a high level of public support.[17]

This theory was put successfully to the test during the Persian Gulf War. The war could not have been fought using active-duty forces alone. After the event, there was debate about the readiness of some reserve units--especially those designated as combat units. But there was no debate about whether the reserve call-up helped forge political support

for waging the conflict. Reconfiguring the military in this way emphasized the responsibilities of citizens for national defense. In effect, it revived the traditional republican belief that the state must have the consent of the citizens before marching to war. It increased the dependence of the active-duty force on the direct descendants of the state militias, and so it reinvigorated the citizen-soldier tradition that marked the country's early history, although at the federal rather than the state level.

Some governors objected to this reconfiguration, especially when it meant that National Guard units were called to perform training with active-duty forces stationed abroad. They specifically opposed a new federal law, passed in 1987, that abolished the requirement that a governor must consent before sending National Guard units for federal training. But when they took their objections to the Supreme Court, the court found no merit in their complaint. Justice John Paul Stevens wrote, "If the discipline required for effective service in the armed forces of a global power requires training in distant lands, or distant skies, Congress has the authority to provide it."[18] For our purposes, the decision is significant because it affirms the new and larger responsibilities of citizen-soldiers as a component of the all-volunteer force. Nevertheless, we should remember that while these military responsibilities are borne by citizen-soldiers, they are borne by citizens who volunteer to accept the task. They are not compelled to do it. The obligation is one they take on themselves.

Contesting the Scope and Content of the Military Obligation

By the late 1970s, the idea that the state could by itself define the scope and content of the military obligation was sharply contested. Throughout our history, military service has been a badge of citizenship, and it was a way for those who wished to become citizens to prove their worth and attachment to the country. There have always been those who were excluded from full citizenship and excluded from the right to bear arms. They sought the right to be included.

Minorities, for instance, long struggled to expand the scope of the military obligation, to end limitations on their military service. Those limitations condemned them to status as second-class citizens. During the all-volunteer force era, their efforts bore fruit. The success of the all-volunteer force depended on the military becoming more accepting and inclusive of the diverse population willing to serve. All services searched for polices that would limit racial tensions and prejudice and stop discriminatory practices. They defined the issue as a problem of leadership and worked vigorously to solve it on the pain of seeming poor leaders. Over time, conflicts were reduced and the military managed to make itself a model of good (not perfect) race relations. This was not simply an organizational achievement. It was the culmination of a long historical struggle in which minorities--African-Americans especially--pressed their claim for equal citizenship through military service.[19]

There is a similar story to tell about gender relations. Since the Vietnam War, barriers to women's service have been steadily torn down. As a result the number of women serving in the military has risen from less than 2 percent to nearly 15 percent today. The number of military occupations open to women has vastly increased as well. As with the case of minorities, there is evidence of organizational initiatives to bring these changes about. Military leaders were aware in the early 1970s that they would need to make fuller use of women if the all-volunteer force was going to succeed. But, as with the integration of racial minorities, the greater incorporation of women into the military has been the outcome of hard-fought political and legal contests more than it has been the result of enlightened organizational leadership. Leaders of the feminist movement worked within the military and through the courts and lobbied Congress to enforce many equal opportunity claims against the military. Their efforts successfully altered life for women in the military. They abolished rules that required women, but not men, to prove spousal dependency to qualify for a family allowance. They eliminated the automatic discharge of women who were pregnant. And they reversed the presumption that only some military jobs were open to women. The presumption now is that only some jobs are closed.[20]

Despite these gains, gender integration remains controversial. It has touched off a kind of culture war as it pits the demands of traditional (male) military culture against the demands that women's status, as responsible citizens, requires their full inclusion in the military. The debate is emotionally charged.[21] Yet none disagree that the military is more open to women's service than it was in the past or that the all-volunteer force has steadily (if reluctantly) increased its commitment to gender integration.

In addition to these struggles by citizens to force the state to expand the scope of the military obligation--who is

obligated and who is not--there have been other struggles by citizens contesting the content of the military obligation--what kinds of performance it includes or does not. The stories here are varied. They include the claim by an Army medic, Michael New, that he could not be compelled to wear a blue United Nations beret and patch while on peacekeeping duty in Macedonia. At issue, he believed, was "whether it is legal to order US soldiers to wear the uniforms of foreign nations and to obey foreign commanders."[22] He was court-martialed for refusing to obey an order and received a bad-conduct discharge from the Army in 1995. The Supreme Court refused to review his request to set aside the bad-conduct discharge, but he continued to pursue his legal appeals of the court martial.

In an earlier case, S. Simcha Goldman, an Air Force officer and orthodox Jew, claimed that he should be permitted to wear a yarmulke while in uniform, as required by his religious faith. Failure to give this permission, he argued, violated his First Amendment rights to the free exercise of his religion. The Supreme Court did not agree. It held that the Constitution gave Congress power to specify what items of clothing might or might not be worn with the uniform. But that ruling also meant that Congress could alter the military's regulations about religious headgear if it wished. The case proved so controversial that Congress did change the law within a year of the court decision, allowing Goldman to wear the yarmulke.[23]

More generally, soldiers and sailors since the end of World War II have labored through the system of military justice to gain many procedural and substantive rights commonly enjoyed by civilians, but traditionally withheld from soldiers.[24] While the conservative Rehnquist court often defers to the military in such cases, even it held in 1996 that military sentences of capital punishment must conform to the same constitutional tests met by civilian courts.[25]

Others have contested, with less success, the government's use of coercion to enforce draft registration. The draft registration law, passed in 1980, compels young men to file with the Selective Service System shortly after their 18th birthday. When a sizable number did not comply, Congress amended the law, requiring compliance as a condition for gaining federal financial aid for higher education. Students who had not registered complained that the amendment forced them to disclose that they had not done so, violating the Fifth Amendment prohibition against self-incrimination.[26] In a separate case, a young man who refused to comply with registration complained that the government prosecuted him for his failure to comply only because he had notified them that he would not register. He was right. The Selective Service adopted a policy of "passive enforcement," meaning they would investigate and prosecute only non-registrants who brought their failure to comply to the government's attention. This young man claimed that this policy amounted to selective prosecution that was barred under the First and Fifth Amendments.[27] The court was not sympathetic with either complaint and decided both in favor of the government's right to act as it did.

What is noteworthy about these cases, won or lost, is that they made it to the Supreme Court. It requires substantial material resources to carry a lawsuit to the court of highest appeals. Even then, most petitions for a hearing are denied. Nevertheless, the resources and the interest were found in the public realm to back citizens who were struggling to be included in the military when the government would rather they were not, or to alter conditions of service that the government would rather not change. The common theme uniting these struggles is that the individual citizen, rather than the state, should determine the nature and the extent of his or her military obligation. Nowadays, no attempt by the US government to define and impose a military obligation on its own terms is likely to escape serious challenge. While those opposing the government do not always win, the trend has been to tilt the balance of power between citizens and the state in favor of citizens.

Significance

What should we conclude about how Vietnam and the rise of the all-volunteer force have altered our conception of the citizen's military obligation? The record is difficult to reduce to one broad stroke, especially if we want to say that the tradition of obligatory military service has either grown stronger or, more likely, weakened over time.

We can point to evidence supporting the judgment that the tradition of obligatory service is weaker today than before Vietnam. We find it, obviously, in the end of the draft, with the military now forced to rely on volunteers in the active-duty force and the reserves; we find it more subtly in the liberalized grounds for claiming conscientious objection; and we find it as well in the readiness of citizens to contest the government's definition of the scope and terms of military

service, to include even the largely symbolic and undemanding duty of draft registration. But this evidence is hardly overwhelming.

Against it, we would have to place the continuing affirmations by the Supreme Court that citizens have an obligation to perform military service and that the government may constitutionally compel that service when it believes it is necessary. These affirmations were not empty rhetoric. They stood against selective conscientious objection, not allowing individuals to decide for themselves whether they thought particular wars were just and warranted their service; and they upheld the practice of giving veterans preferential access to certain social goods. In addition, creation of a "total force," reliant on the Army Reserve and National Guard, revived the citizen-soldier tradition, raising its importance above what it was before the Vietnam War. Moreover, the efforts of excluded groups during the all-volunteer force era to remove government restrictions on their military service testify to the continuing importance of military service as a means to escape the status of second-class citizen. Plainly, the concepts of "strength" and "weakness" when applied to this problem do not help to explain the variation we observe.

What we need is a theoretical language about the obligations of citizens that is more differentiated and precise. Let us begin with an elementary distinction between obligations thought of as an abstract ideal applying in general to all citizens at all times, and obligations thought of as something to be applied variously to particular communities of citizens at different times. The same obligation considered at different levels of generality may vary in what it requires of us and in our willingness to accept it.

We know this from listening to ordinary speech. Take, for example, an exchange taped in 1971 between two reluctant soldiers fighting in South Vietnam. Criticized by their commander for wearing T-shirts with peace signs on them, the soldiers complained to a journalist. One said, "He calls us hypocrites 'cause we wear peace signs. . . . Like if we wanted to come over and fight." The second one said, "I . . . do believe in protecting my own country if it came down to that." "Yeah," the first chimed in, "if it came down to that. But . . ." The second finished his thought, "See I'm over here fighting a war for a cause that means nothing to me." The first agreed.[28] This exchange shows how we ordinarily think about the military duties of citizenship along two different (though not independent) dimensions of generality. These soldiers accepted the abstract ideal that they had a military obligation to defend the country. What they doubted was whether the obligation was appropriately applied to this particular war in Vietnam. Our analysis should be similarly refined.

At the higher, abstract level, there is no persuasive evidence that the country has abandoned the ideal that citizens should bear arms in their country's defense. That ideal remains an essential ingredient of citizenship. That is not to say that no one doubts it or that it may not be subject to change.[29] Some doubt was cast on the proposition when, after World War II, it was no longer required that those applying for citizenship promise to bear arms. It remains an open question whether that precedent will have larger consequences for the transformation of citizenship. Yet there is reason to think not. Consider the logical problem posed when we try to say (as many have) that military duty is a prerequisite of citizenship and that women are citizens but should not be soldiers. During the all-volunteer force era, that problem has been more often confronted than in the past, and increasingly, though not completely, it has been solved by shelving the idea that women should not be soldiers and upholding the idea of a general military obligation. For the time being, at least, the abstract ideal of the military obligation of citizenship remains intact.

Accepting that the military obligation of citizens remains an abstract ideal, our problem is to explain how it has changed in its particular application over time. To deal with this problem, another distinction is required, between what John Stuart Mill called "perfect" and "imperfect" obligations.[30] Mill thought perfect obligations imposed an absolute duty on citizens; they were obligations that could justly be enforced by the state. They were, in other words, *unlimited* liabilities of citizenship. In contrast, Mill thought imperfect obligations could not be enforced by the state; they were obligations that we should perform, but we were free to choose the time and circumstances of our performance. They were *limited* liabilities of citizenship. We may accept them as they arise or not, either acting now or biding our time for another occasion to serve. This distinction helps make sense of how the citizen's military obligation has changed.

When the Vietnam War began in 1965, the United States was a community in which it was generally agreed that male citizens had an absolute duty (an unlimited liability) to perform military service while they were young. Many were

not required to serve. But that did not change matters; the liability remained and the discretion belonged to the state. Expanding the grounds on which individuals might claim to be conscientious objectors was a significant but small step away from an unlimited toward a limited liability model of citizenship. The big step away from this model was the end of the draft. The all-volunteer force does not deny that citizens have a military obligation. Rather, it presumes that the obligation is imperfect, that it imposes a limited liability on citizens who will choose to fulfill their military obligation when they believe it is appropriate for them to do so. Market forces, social pressure, recruiting campaigns may all influence the decision, but the decision remains with the individual citizen, not the state.

Even so, there is more at work here than the end of the draft. We have seen during the all-volunteer force era that some citizens have fought government restrictions that limited their opportunities to perform military service. They sought to expand the scope of the military obligation. Others contested with the government to retain what they thought were their fundamental rights even while they were in the military services. They sought to redefine the content of the military obligation. What is common to these otherwise varied efforts against the state is their presumption of a limited liability model of citizenship.

Since Vietnam, the citizen's military obligation has become a more limited liability. The extent of the movement in this direction is far from complete. It is not entirely the case that citizens are free to decide what the military obligation means and whether or how it should be met in their lives. But a great distance has been traveled away from the unlimited liability model of citizenship that held sway in 1965.

NOTES

1. George Q. Flynn, *The Draft, 1940-1973* (Lawrence: Univ. Press of Kansas, 1993), pp. 160-65, 169.

2. Quoted in Bob Greene, *Duty: A Father, His Son, and the Man Who Won the War* (New York: William Morrow, 2000), p. 141.

3. George H. Gallup, *The Gallup Poll: Pubic Opinion, 1935-1971* (New York: Random House, 1972), III, 2,017.

4. For an overview, see Anthony A. D'Amato and Robert M. O'Neil, *The Judiciary and Vietnam* (New York: St. Martin's Press, 1972).

5. *Selective Draft Law Cases*, 245 US 366 (1918).

6. *US v. Schwimmer*, 279 US 644 (1929); *US v. Macintosh*, 283 US 605 (1931); *US v. Bland*, 283 US 636 (1931).

7. *Hamilton et al. v. Regents of the University of California*, 293 US 245 (1934) at 266, 268.

8. *Girouard v. US*, 328 US 61 (1946) at 64.

9. 380 US 163 (1965).

10. 380 US 163 (1965) at 187.

11. 398 US 333 (1970).

12. 398 US 333 (1970) at 358.

13. *Richter v. US*, 181 F.2d 591 (1950) at 592-3.

14. Robert K. Griffith, Jr., *The US Army's Transition to the All-Volunteer Force, 1968-1974* (Washington: US Army, Center of Military History, 1997), pp. 101-14; James Kitfield, *Prodigal Soldiers* (New York: Simon and Schuster, 1995), pp. 131-43.

15. James Burk, "Patriotism and the All-Volunteer Force," *Journal of Political and Military Sociology*, 12 (Fall 1984),

229-41.

16. David R. Segal, *Recruiting for Uncle Sam* (Lawrence: Univ. Press of Kansas, 1989), pp. 77-101.

17. On the creation of the "total force," see Lewis Sorley, *Thunderbolt* (New York: Simon and Schuster, 1992), pp. 360-66; and Kitfield, *Prodigal Soldiers*, pp. 149-51.

18. *Perpich v. Department of Defense*, 496 US 344 (1990) at 350.

19. See Bernard C. Nalty, *Strength for the Fight* (New York: Free Press, 1986), pp. 301-17; James Burk, "Citizenship Status and Military Service," *Armed Forces & Society*, 21 (Summer 1995), 503-29; and Charles C. Moskos and John Sibley Butler, *All that We Can Be* (New York: Basic Books, 1997).

20. Mary Fainsod Katzenstein, *Faithful and Fearless: Moving Feminist Protest Inside the Church and Military* (Princeton, N.J.: Princeton Univ. Press, 1998).

21. Contrast Stephanie Gutmann, *The Kinder, Gentler Military* (New York: Scribner, 2000) with R. Claire Snyder, *Citizen-Soldiers and Manly Warriors: Military Service and Gender in the Civic Republican Tradition* (Lanham, Md.: Rowman & Littlefield, 1999).

22. Quoted in Bob Dart, "Appeals Court May Reconsider Soldier's Ouster," *Atlanta Journal and Constitution*, 5 February 2000, p. 3B; accessed through Lexis-Nexus, academic universe.

23. *Goldman v. Weinberger*, 475 US 503 (1986).

24. The Court of Appeals for the Armed Forces, in particular, has embraced civilian legal standards in its review of military cases, with the effect of incorporating these into military law. See Eugene R. Fidell, "Going Fifty: Evolution and Devolution in Military Justice," *Wake Forest Law Review*, 32 (Winter 1997), 1,213-31.

25. *Loving v. US*, 517 US 748 (1996).

26. *Selective Service System et al. v. Minnesota Public Interest Research Group et al.*, 468 US 841.

27. *Wayte v. US*, 470 US 598 (1985).

28. Transcript, "How Vietnam Has Been Documented and Reinterpreted Since the End of the War," Morning Edition (National Public Radio), 20 April 2000; available through Lexus-Nexus, academic edition.

29. For a general discussion about how the abstract ideals of citizenship might change, see J. G. A. Pocock, "The Ideal of Citizenship Since Classical Times," *Queen's Quarterly*, 99 (Spring 1992), 33-55; and Susan Moller Okin, "Women, Equality, and Citizenship," *Queen's Quarterly*,99 (Spring 1992), 56-71.

30. John Stuart Mill, *Utilitarianism*, ed. Oskar Priest (Indianapolis: Bobbs-Merrill, 1957), p. 61.

James Burk is professor of sociology at Texas A&M University, College Station, Texas. Formerly editor of *Armed Forces & Society*, he studies civil-military relations and political culture. His most recent book, an edited volume, is *The Adaptive Military*.

Reviewed 7 May 2001. Please send comments or corrections to carl_Parameters@conus.army.mil